

Message

From: Mancusi-Ungaro, Philip [Mancusi-Ungaro.Philip@epa.gov]
Sent: 2/5/2018 10:51:48 AM
To: Wehling, Carrie [Wehling.Carrie@epa.gov]
CC: Kupchan, Simma [Kupchan.Simma@epa.gov]; Nalven, Heidi [Nalven.Heidi@epa.gov]; Wade, Alexis [Wade.Alexis@epa.gov]
Subject: Re: Florida 404 assumption

Simma, I am generally available Monday am until 10. I do have a mtd I need to finish reviewing and get comments to Heidi first thing.

Phil

Sent from my iPhone

On Feb 4, 2018, at 3:18 PM, Wehling, Carrie <Wehling.Carrie@epa.gov> wrote:

Thanks, Simma!

Caroline (Carrie) Wehling
Assistant General Counsel
Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Kupchan, Simma
Sent: Friday, February 02, 2018 3:52 PM
To: Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>
Cc: Wehling, Carrie <Wehling.Carrie@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Subject: Re: Florida 404 assumption

Thanks for filling in in my absence, everyone. I can set up a meeting on this first thing Monday.

Simma Kupchan
Attorney-Advisor
Water Law Office
EPA Office of General Counsel
202-564-3105

On Feb 2, 2018, at 1:49 PM, Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov> wrote:

David,

Sorry for two messages, but Carrie asked me to provide an update on where things stand with the 404 process. Florida started this effort last year. To be approved, the State program must be consistent with and no less stringent than the Clean Water Act and implementing regulations.

For background, as spelled out in 40 CFR Part 233, Subpart B, an assumption package must include:

- <!--[if !supportLists]--><!--[endif]-->Letter from Governor submitting the package for approval
- <!--[if !supportLists]--><!--[endif]-->Complete program description including how the program will operate, organization of the state agencies, funding and staffing, workload estimates, forms, enforcement, and description of state definition of waters including wetlands
- <!--[if !supportLists]--><!--[endif]-->Attorney General's statement that the state has adequate legal authority citing to specific authorities
- <!--[if !supportLists]--><!--[endif]-->MOA with EPA Regional Administrator on program operation
- <!--[if !supportLists]--><!--[endif]-->MOA with Secretary of Army (through Chief USACE) identifying which waters the state will be assuming, and the transfer of existing permit applications
- <!--[if !supportLists]--><!--[endif]-->All applicable state statutes and regulations administering the program

Florida's plan is to submit the complete package to EPA by August 1, 2018 in order to complete process before the end of Governor Scott's term. That submittal will trigger EPA's 120 day review clock.

Florida plans to use their existing Environmental Resource Permit (ERP) process for issuing the equivalent of Section 404 permits

Florida shared draft MOA's with the COE and separately EPA in late 2017 and EPA has been working with the state on edits to the EPA MOA.

The COE is working on identifying which waters the COE will retain after assumption following the COE's minority recommendation in the Assumable Waters FACA Report. After discussions with EPA on their statutes and rules, FDEP has drafted legislation to address some needed changes to state law that has been filed and has passed out of committee at the state legislature.

EPA and FDEP have been working through a comparison of their statutes and rules for consistency with the federal program using a crosswalk approach.

Florida is working on drafting rule changes that they will share with us during our next face to face meeting scheduled for February 27 – March 1.

Florida plans to go to rulemaking this spring.

EPA and Florida, coordinating with the COE, have been closely reviewing their wetlands delineation manual, including doing field checks, to determine if it is as inclusive as the federal scope of jurisdictional wetlands.

I hope this helps frame the process and status for you.

Phil

Philip G. Mancusi-Ungaro
Attorney-Adviser
Office of Water Legal Support
USEPA Region 4
61 Forsyth St, SW
Atlanta, GA 30303
Tel: 404-562-9519
Cel: Ex. 6 Personal Privacy (PP)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

From: Mancusi-Ungaro, Philip
Sent: Friday, February 02, 2018 12:58 PM
To: Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Cc: Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>
Subject: RE: Florida 404 assumption

David, to give you a little more background on how we are managing this process and the ESA issue. When Florida first approached the region, at Trey Glenn's request, we set up a workgroup that includes regional program management and staff in the Section 404 permitting and enforcement program, Kathy Hurd from headquarters, both myself and Matt Hicks from the ORC water law office, Jeff Speir from water enforcement in OECA, as well as Heidi Nalven who was filling in for Simma Kupchan while

Ex. 6 Personal Privacy (PP) This group has standing weekly internal meetings, and biweekly meetings with Florida DEP. And we have smaller group meetings as needed to address specific issues such as the ESA, that come up. In the Region we regularly update Mary Walker the Water Division Director and have briefed Trey several times.

Heidi and now Simma are actively involved in this effort and are members of this team. Their support has been critical to us in moving this effort forward.

On the ESA issue, to clear up a point, FDEP does not believe there is a need for consultation for program assumption. As Carrie noted, they do have stakeholders who are focused on Section 7 consultation but for state issued permits that have the reasonable potential to impact a threatened and endangered species.

Ex. 5 AC/DP

Ex. 5 AC/DP

I hope this helps.

If you need more information on this, please feel free to reach out.

Phil

Philip G. Mancusi-Ungaro

Acting Chief, Office of Water Legal Support
USEPA Region 4
61 Forsyth St, SW
Atlanta, GA 30303
Tel: 404-562-9519
Ce] Ex. 6 Personal Privacy (PP)

This email is from an attorney and may contain privileged information and attorney-client communications and should not be released under FOIA or discovery to individuals or entities outside of EPA or the U.S. Department of Justice without the knowledge of the sender.

From: Wehling, Carrie
Sent: Friday, February 02, 2018 11:57 AM
To: Fotouhi, David <Fotouhi.David@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>
Cc: Mancusi-Ungaro, Philip <Mancusi-Ungaro.Philip@epa.gov>
Subject: RE: Florida 404 assumption

Hi, David. We have been already involved in this, although Phil Mancuso-Ungaro in R4 ORC has the lead and has been deeply involved for years. He might be able to provide a status update since Simma is out today. She did send me this update a few days ago:

Florida state assumption:

Ex. 5 Attorney Client (AC)

Ex. 5 Attorney Client (AC)

Mary Walker, the R4 Water Division Director, will be in DC next week and plans to discuss this issue with John Goodin. It will likely be elevated in the near future.

We will set up a time to discuss early next week.
Thanks.
Carrie

Caroline (Carrie) Wehling
Assistant General Counsel

Water Law Office
U.S. Environmental Protection Agency
Washington DC 20004
202-564-5492
wehling.carrie@epa.gov

From: Fotouhi, David

Sent: Friday, February 02, 2018 11:34 AM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Nalven, Heidi <Nalven.Heidi@epa.gov>; Wade, Alexis <Wade.Alexis@epa.gov>

Subject: Florida 404 assumption

Matt would like WLO to take a more active role in the Florida 404(c) assumption process. Could you please provide me with a status update on the process by this afternoon (e-mail would be fine)? Also, could we set up a time early next week to discuss?

Best,

David

David Fotouhi

Deputy General Counsel
Office of General Counsel
U.S. Environmental Protection Agency
Tel: +1 202.564.1976
fotouhi.david@epa.gov